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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/527,927	03/17/2000	Woodson C. Lewis	DN 3564	3926

1688 7590 02/08/2002

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EXAMINER

KALINOWSKI, ALEXANDER G

ART UNIT	PAPER NUMBER
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2166

DATE MAILED: 02/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**Application No.  
**09/527,927**Applicant(s)  
**Lewis**Examiner  
**Alexander Kalinowski**Art Unit  
**2166**

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Jan 8, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (See NOTE below);
- (b) ☐ they raise the issue of new matter. (See NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

4. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_
5. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s).
6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
see attached
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):  
Claim(s) allowed: \_\_\_\_\_  
Claim(s) objected to: \_\_\_\_\_  
Claim(s) rejected: 1-20
9. ☐ The proposed drawing correction filed on \_\_\_\_\_ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).
11. ☐ Other:

JOSEPH THOMAS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

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### **DETAILED ACTION**

Applicant filed a request for reconsideration of the final rejection in order to reconsider the effectiveness of the previously filed Declaration (see Paper No. 9) to overcome the Ticketmaster.com reference used in the outstanding rejection of claims 1-20 based on 35 USC 102 and 35 USC 103. Applicant argued that the Examiner applied an incorrect standard when considering the effectiveness of the Declaration at the time of the final rejection. Applicant further argued that the Declaration showed a conception of the invention prior to the effective date of the Ticketmaster.com coupled with due diligence from prior to said date to a subsequent reduction to practice or constructive reduction to practice. Applicant further argued since the Declaration was effective to overcome the Ticketmaster.com reference, the grounds of rejection of claims 1-20 based on 35 USC 102 and 35 USC 103 should be withdrawn. After careful review of Applicant's arguments, the Examiner has determined that the Declaration filed on 5/4/2001 is ineffective to overcome the Ticketmaster.com reference as explained in detail below. Therefore, Applicant's arguments fail to overcome the grounds of rejection of claims 1-20 based on 35 USC 102 and 35 USC 103.

1. The declaration filed on 5/4/2001 under 37 CFR 1.131 has been considered but is ineffective to overcome the Ticketmaster.com reference.
2. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Ticketmaster.com reference to either a constructive reduction to practice or an actual reduction to practice. Applicant argued that the

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Declaration filed on 5/4/2001 established a conception of the invention prior to the effective date of the Ticketmaster.com reference and there was diligence on the part of the Applicant to a time just prior to the effective date of the Ticketmaster.com reference up to the filing date of the instant application. Applicant argued that the Declaration is effective in overcoming the Ticketmaster.com reference and therefore the outstanding grounds of rejection of claims 1-20 based on 35 USC 102 and 103 should be withdrawn since the rejections relied on the Ticketmaster.com reference. The Examiner disagrees. As a preliminary matter, the Examiner accepts Applicant's arguments establishing conception of the invention prior to the effective date of the Ticketmaster.com reference. However, the evidence submitted by Applicant within the Declaration is insufficient to establish diligence. The Applicant failed to disclose evidence of facts establishing reasonable diligence during the critical period that began just prior to the effective date of the Ticketmaster.com reference up to the date of a reduction to practice (i.e. constructive - filing date of the instant application). The Declaration states that Applicant had a meeting on 1/20/2000 with a Patent attorney which was just prior to the effective date of the Ticketmaster.com reference. The Declaration then states that several events occurred after the meeting without providing any timetable as to when the events occurred (e.g. patentability search was conducted after the meeting). The next date provided by the Declaration was Applicant's receipt of a draft of the patent application on 3/16/2000. The Examiner notes that the Declaration does not present sufficient evidence to establish

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diligence between the period of 1/20/2000 and 3/17/2000. The entire period during which diligence is required must be accounted for by either affirmative acts or acceptable excuses (see MPEP 715.07 and 2138.06). Therefore, the Declaration is insufficient to establish diligence as required by 37 CFR 1.131 and the Declaration is still ineffective to overcome the Ticketmaster.com reference. The grounds of rejection of claims 1-20 based on 35 USC 102 and 35 USC 103 are maintained by the Examiner.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Kalinowski, whose telephone number is (703) 305-2398. The examiner can normally be reached on Monday to Thursday from 8:30 AM to 6:00 PM. In addition, the examiner can be reached on alternate Fridays.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached on (703) 305-9588. The fax telephone number for this group is (703) 305-0040.

Alexander Kalinowski 

2/8/2001